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Supreme Court of the United States

OCTOBER TERM, 1949

No. 447.

LAND O' LAKES DAIRY COMPANY,

Appellant,

vs.

COUNTY OF WADENA AND STATE OF MINNESOTA,

Appellees.

STATE OF MINNESOTA,

Appellee,

vs.

LAND O' LAKES DAIRY COMPANY,

Appellant.

APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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Appellant hereby answers the several points in the Statement of the Appellees Opposing Jurisdiction and Moving to Dismiss or Affirm.

1.

The Embracing of the Two Judgments in a Single Appeal is Not a Ground for Dismissal.

The record shows that there was a complete consolidation of the two cases involved in this appeal. They were tried together in the lower court (R. 77, 99). They were taken to the Supreme Court of Minnesota on a single transcript, and on a single Assignments of Error (R. 111), and on a single Statement of Issues (R. 112). They were briefed as one case by both parties in the Supreme Court of Minnesota and argued as one case in that court, and were disposed of by that court by a single written opinion and decision (Appendix A of Appellant's Statement of Jurisdiction). A single motion for rehearing was filed and disposed of by a single order in the State Supreme Court (R. 129, 148).

The point raised by Appellees is disposed of in favor of Appellant by the decision of this Court in the case of *First National Bank v. Tax Commission*, 289 U. S. 60, in which the Court said:

> "The plaintiffs appealed to this court, and the defendants moved to dismiss the appeal on the ground that the plaintiffs had embraced in a single appeal the separate judgments rendered in the three cases. Consideration of that motion was postponed to the argument on the merits.
>
> "The argument for dismissal is that the cases had been consolidated below only for the purpose of trial; that since there was no true consolidation of the cases below, and a separate judgment was rendered in each, the separate causes cannot be brought for review to this

court by a single appeal. Cf. Brown v. Spofford, 95 U. S. 474, 484-485. The record discloses that a complete consolidation of the causes was effected. Not only were the three cases consolidated for trial in the District Court; they were taken to the Supreme Court of the State on a single transcript; were there docketed and argued as one case, and were there disposed of by a single written opinion. The record shows also that a joint petition for a rehearing was filed and likewise disposed of by a single opinion. The motion to dismiss the appeal is denied." (p. 62)

This applies precisely to the present appeal. Appellees cite no authority to the contrary. Appellees' objections to the bond accepted by the Chief Justice of the Minnesota Supreme Court appears frivolous. Such objections do not affect the appeal; see *Jerome v. McCarter*, 21 Wall. 17, *New Orleans Insurance Co. v. Albro Co.*, 112 U. S. 506, and *Mexican Construction Co. v. Reusens*, 118 U. S. 49, where this Court recognized a degree of discretion reposed in the judge issuing the citation on appeal.

2.

The Issue on this Appeal Involves the Effect to be Given to the Documents Evidencing the Government's Transaction with Appellant, Which is Not Settled by Decisions in Other Cases.

The interpretations given by this Court to other transactions of the Government in procurement or disposal of property do not settle the issue of this appeal. In *U. S. v. Shelby Iron Co.*, 273 U. S. 571, land and buildings were conveyed

to the United States pursuant to a contract which recited a certain indebtedness owing by the grantor to the Government. The Government gave back a lease on which a lump sum rent was agreed to be paid equal to the indebtedness, and upon payment thereof the Government agreed to reconvey the property. On those facts this Court held the transaction to be an equitable mortgage. The case did not involve taxes. Here what the Government paid to Appellant was not a "loan" but an outright purchase price of the property clearly so expressed in the contract. The rent was payable in quarterly installments only so long as the lease endured, and whether the lease would endure long enough for the Government to get back in rent what it paid for the property was wholly optional with the lessee.

S. R. A. Inc. v. Minnesota, 327 U. S. 558, involved a sale of property by the Government to a private party on an ordinary land contract, which was held to vest equitable ownership in the purchaser.

Virginia Shipbuilding Corporation v. United States, 22 F. 2d 38 (4th Circ.) involved a contract for the return by the Government to its contractor of legal title to certain ships built for the Government during the First World War. The contract stated that the Government had *"loaned"* certain sums of money to the contractor for building the ships, and the contractor agreed to repay said loans within a certain stated period of time, and upon payment thereof the property would be reconveyed. The transaction was held to be a mortgage. Here there was no agreement by Appellant to pay anything to the Government except rent for so long as the lease was in effect.

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These were the cases cited by the Appellees and relied upon by the Minnesota Supreme Court as being decisive of the issue here presented. They each involved documents wholly dissimilar from the transaction here in question.

3.

Appellant's Complaint is that it is Being Taxed for the Government's Equity in the Property, a Result Contrary to the Immunity Doctrine of the Federal Constitution and the Fourteenth Amendment.

There are involved in this appeal two basic constitutional principles. The first is the well-established immunity doctrine, which holds that Government-owned property to the full extent of the Government's interest may not be taxed by a state, either to the Government or to the Government's lessee, without the consent of Congress. The second principle is equally well established that imposition by a state of an ad valorem tax on one person for the property of another person is a taking of property without due process of law in violation of the Fourteenth Amendment. Appellant has standing in court to assert these principles without the aid of the Government, *U. S. v. Allegheny County* 322 U. S. 174, 191-192.

4.

The Giving of "Finality" by the Minnesota Supreme Court to the Statements in the Trial Court's Memorandum in the Real Estate Case Involved Determination of the Whole Federal Question Here Sought to be Reviewed.

The omission which the Minnesota Supreme Court said existed in Appellant's assignments of error (omission of an express reference to the trial court's memorandum in the real estate case) would not, standing alone, support the judgment in the real estate case. What the Court said as to this omission was simply this: That by reason of such omission in the assignments of error the statements in the memorandum, *"if not inconsistent"* with the specific findings, would be "final" on the appeal to that court. The trial court specifically found the execution and existence of the contract, lease, and deed of the properties to the Government, and the assessment and levy of the taxes. These were the only facts in the case and the findings were confined to those facts. Whether the views expressed in the memorandum as to the transaction being a mortgage and the tax proceedings being "subordinate" to the Government's interest were *"consistent"* with these findings was the whole issue in the case. Practically the entire opinion of the Minnesota Supreme Court was devoted to that question, and that is the question on this appeal. The Court's long discussion as to the transaction being a mortgage was its explanation why it considered the trial court's memorandum *"consistent"* with the findings of fact.

The omission in the assignments of error did not of itself give "finality" to the trial court's memorandum. It was not an independent ground of decision. So far as the omission

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affected the decision, that depended upon solution of the whole basic issue in the case as to the consistency of the memorandum with the specific findings. At the commencement of its opinion the Minnesota Supreme Court framed the issues of the case, they being based on the construction of the documents, and nothing was added toward the solution of those issues by injecting the point as to the omission in the assignments of error, because by the Court's own interpretation of its rules such omission would have no bearing on the result without first settling those issues, which the Court did, and which settlement is the subject matter of this appeal.

5.

The Holding of *Res Adjudicata* in the Personal Property Case, being a Bar to Adjudication of the Constitutional Issue Asserted in that Case, is Reviewable by this Court as Respects the Adequacy of the Ground for the Holding.

In the previous declaratory judgment action the Minnesota Supreme Court refused to pass upon the validity or invalidity of the tax statute and tax assessment. The Court said in that case that because of Appellant having covenanted in the lease to pay taxes it was not entitled to relief under the declaratory judgments statute (see Appendix D of Appellant's Statement of Jurisdiction, last paragraph of opinion as modified on rehearing). This Court declined to review the State Court's decision in the former case (certiorari denied, 334 U. S. 844).

Where, as here, the State Supreme Court makes use of that former decision to bar adjudication of the federal issue properly asserted by Appellant in this present action as a defense to the suit of the State to collect the tax, it becomes the province of this Court to inquire into the adequacy of the grounds for raising such bar. In this present action the Minnesota Supreme Court did consider the validity of the tax statute and tax assessment which it declined to consider in the previous action. Here the Court made it clear that the personal property tax issue in the present case was being decided on the merits on the basis of the construction of the transaction as being a mortgage. In the last paragraph of its opinion the Court stated in effect that the reason which it gave in the previous action for declining declaratory relief was not the basis of its decision in this case but that this case was determined independently of the previous grounds of decision. For these reasons there exists no adequate ground for holding the judgment in the previous action to be conclusive of the federal issue here properly asserted and dealt with in the State Court's opinion, and such should be the determination of this Court.

Respectfully submitted,

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